IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3837 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTILAL AMBALAL GANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3837 of 2004

MR BS PATEL for Petitioner No. 1

MRS RANJAN B PATEL for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 07/02/2005

ORAL JUDGEMENT

Rule was issued on 5.4.04 and ad-interim relief against the recovery pursuant to the impugned order

Annexure A was granted. For confirmation or vacating the interim relief, the petition was placed before me. The learned advocates appearing for the parties submit that instead of hearing the matter for the purpose of confirmation/vacating of interim relief, the entire petition can be disposed of finally. Accordingly, I have heard the learned counsel appearing for the parties with respect to the challenge to the impugned order dated 4.5.02.

2. By the impugned order dated 4.5.02, the Disciplinary Authority ordered removal of the petitioner from service with retrospective effect from 10.2.99. The appeal filed by the petitioner also failed and the appellate authority by order dated 30th December 2003 was pleased to reject the appeal of the petitioner.

3. Short facts leading to the present petition are that the petitioner who was working as Maintenance Surveyor was caught in a trap laid by the Anti-corruption Department on 29.7.94. Eventually, a criminal case was filed against the petitioner under the provisions of the Prevention of Corruption Act. By the order dated 10.2.99, the petitioner was convicted of the offence punishable under section 13(1) and 13(2) of the Prevention of Corruption Act and he was ordered to undergo imprisonment for a period of four years and fine of Rs.5,000/- was also imposed on him. In case of default of payment of fine, the petitioner was ordered to undergo further imprisonment for a period of six months. The petitioner has challenged the said decision by which he was convicted by the criminal court and his appeal being Criminal Appeal No.236/99 is pending before this Court. This Court has suspended the sentence and the petitioner is enlarged on bail. On 30th June 2002, the petitioner reached the age of superannuation.

4. On the basis of his conviction by the criminal court, the Disciplinary Authority passed the impugned order dated 4.5.02 by which, as noted earlier, the petitioner is removed from service with retrospective effect from 10.2.99.

5. It is by now well settled that when a Government servant is convicted of a criminal offence by the court, mere pendency and suspension of the sentence by the appellate Court would not be an impediment on the disciplinary authority in passing the order of punishment on the basis of such conviction [see (1995) 3 SCC 377]. In such a case, it would not be open for the Government servant to insist that the disciplinary authority awaits

the final outcome of the appeal. However, if the appeal is ultimately allowed in favour of the Government servant, the authorities shall have to take into consideration such a decision. In this view of the matter, it is not even argued by the learned advocate for the petitioner that the Disciplinary Authority could not have relied on the conviction of the petitioner for passing the order of penalty. What is contended and in my view justifiably is that at any rate the Disciplinary Authority could not have passed the said order with retrospective effect and gone on to order even recovery of subsistence allowance already paid to the petitioner. Learned AGP is unable to substantiate the legality of the said order in so far as the same operates with retrospective effect. When the petitioner was placed under suspension pending the criminal prosecution and he was allowed to continue in suspension and actually paid the subsistence allowance, I am unable to see any power with the Disciplinary Authority in seeking to recover such subsistance allowance by passing the order of punishment with retrospective effect.

6. In view of the above discussion, I find that the Disciplinary Authority was well within its power in passing the order of removal from service on the basis of conviction of the petitioner by the Criminal Court. The retrospective operation of the said order, however, cannot be sustained and the same is required to be quashed and set aside. Retrospective operation of the order of penalty being severable, the prospective operation of the said order is saved.

7. In the result, in so far as the impugned order dated 4.5.02 is concerned, the retrospective operation of the said order is quashed and set aside. The same shall operate prospectively from the date of the order. As noted earlier, it will be open for the petitioner to approach the authorities in the event of acquittal by the High Court. Since the retrospective operation of the order is set aside, there would be no question of recovery of subsistence allowance already paid. With these directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J .)
(vjn)